

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RACE DAY STABLE, LLC
THOMAS CAMPANIELLO,

Index No. 08 CV 4220

Plaintiff,

Answer to Second Amended Complaint

- against -

EBERT VANS INC. and
WILLIAM TERRILL,

Defendants.
-----X

The Defendants by their attorney, Howard M. Lefkowitz, Esq. as and for their
Amended Answer to the Second Amended Complaint, allege as follows:

1. Denies knowledge or information sufficient to form a belief as to the
allegations set forth in the Paragraphs of the Complaint numbered and designated “1”,
“3”, “4”, “5”, “7”, “9”, “13”, “14”, “15”, and “17” through “24” inclusive.

2. Denies each and every allegation of the Paragraphs of the Complaint
numbered and designated as “2”, “6”, “8”, “16”, “25” through “28” inclusive.

AS AND FOR A RESPONSE TO COUNT 1

3. With respect to the paragraph of the Complaint number and designated as
“29”, the Defendants repeat, reiterate, and reallege each and every response set forth in this
Answer to the paragraphs of the Complaint number and designated as “1” through “28”.

4. Denies each and every allegation of the Paragraphs of the Complaint numbered and designated as “30” through “37” inclusive.

AS AND FOR A RESPONSE TO COUNT II

5. With respect to the paragraph of the Complaint number and designated as “38”, the Defendants repeat, reiterate, and reallege each and every response set forth in this Answer to the paragraphs of the Complaint number and designated as “1” through “37”.

6. Denies each and every allegation of the Paragraphs of the Complaint numbered and designated as “39” through “46” inclusive.

AS AND FOR A RESPONSE TO COUNT III

7. With respect to the paragraph of the Complaint number and designated as “47”, the Defendants repeat, reiterate, and reallege each and every response set forth in this Answer to the paragraphs of the Complaint number and designated as “1” through “46”.

8. Denies each and every allegation of the Paragraphs of the Complaint numbered and designated as “49” through “52” inclusive.

AS AND FOR A RESPONSE TO COUNT IV

9. With respect to the paragraph of the Complaint number and designated as

“53”, the Defendants repeat, reiterate, and reallege each and every response set forth in this Answer to the paragraphs of the Complaint number and designated as “1” through “52”.

10. Denies knowledge or information sufficient to form a belief as to the allegations set forth in the Paragraphs of the Complaint numbered and designated as “54”.

11. Denies each and every allegation of the Paragraphs of the Complaint numbered and designated as “55” through “59” inclusive.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

12. That the allegations contained in the Complaint fail to state a cause of action upon which the Plaintiff may be granted the relief it seeks.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

13. At all times herein, the acts, deeds, and omissions, if any, done or omitted by the Defendant, William Terrill, were committed or omitted as the authorized representative, agent and/or employee of Ebert Vans Inc., a corporation, and only in such capacity; therefore, the Defendant William Terrill has no responsibility, liability, or obligation of any kind whatsoever for the commissions or omissions, if any, alleged and complained of herein by the Plaintiff in each of the causes of action; and therefore as to the Defendant William Terrill, the Complaint should be dismissed.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

14. That the Allegations contained within the Plaintiff's Complaint are not pleaded with sufficient specificity as to satisfy the requirements of CPLR 3016.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

15. At no time did the Plaintiff enter into a contract with Defendant William Terrill or have any type of relationship with said Defendant; therefore there is no privity of contract between the Plaintiff and William Terrill.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

16. The contract between the parties limits the Defendant's liability.

WHEREFORE, the Defendants respectfully demand judgment as follows:

(A) Dismissing the Complaint herein in its entirety; together with costs and disbursements;

(B) Together with costs and such other and further relief as to the Court seems just and proper.

Dated: Chappaqua, New York
August 4, 2008

/s/
HOWARD M. LEFKOWITZ, ESQ. (8484)
Attorney for Defendants
32 Flag Hill Road
Chappaqua, New York 10514
(914)769-7668

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RACE DAY STABLE, LLC
THOMAS CAMPANIELLO,

Index No. 08 CV 4220

Plaintiff,

AFFIRMATION OF SERVICE

- against -

EBERT VANS INC. and
WILLIAM TERRILL,

Defendants.
-----X

Howard M. Lefkowitz, an attorney duly admitted to the Courts of the State of New York and the United States District Court for the Southern District of New York, under the penalties of perjury, affirms as follows:

On August 4, 2008, affiant served the within Answer upon Phillipson & Uretsky, LLP, attorneys for the Plaintiff at 111 Broadway, 8th Floor, New York, New York 10006, the address designated by said attorneys, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Dated: Chappaqua, New York
August 4, 2008

/s/
HOWARD M. LEFKOWITZ